HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 1534 of 2006

Petitioner — Smt. Shyam Bai, W/o. Ram Dayal, aged about 41 years Caste Satnami, Sarpanch, Gram Panchayat Piparbhuna, Tehsil Bilaigarh, Distt. Raipur, R/o. Madhubandkhur Gram Panchayat Piparbhavna Tehsil Bilaigarh, Distt. Raigarh (C.G.).

Versus

Respondents

1) Jani Ram S/o. Teej Ram Caste Satnami, R/o. Village Madhubandkhur Village Panchayat Pipar Bhavna Tehsil Bilaigarh Distt. Raipur (C.G.).

2) Ram Kumar S/o. Avadh Ram R/o. Village Pipar Bhavna Tehsil Bilaigarh Distt. Raipur.

3) Ghasidar S/o. Prem Das, R/o. Village Tendua, Gram Panchayat, Piparbhavna Tehsil Bilaigarh, Distt. Raipur.

4) Sanat Kumar S/o. Sonaou Ram R/o. Village Bhavna Tehsil Bilaigasrh, Distt. Raigarh.

5) Specified Officer Cum Sub Divisional Officer (Revenue) Bilaigarh, Distt. Raipur (C.G).

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Satish K. Agnihotri, J.

Present: Shri S.N. Nande, counsel for the petitioner.
Shri Sunil Sahu, counsel for the respondent No.1.
Shri Arvind Dubey, Panel Lawyer for the respondent No.5.

ORAL ORDER

(Passed on 13th December, 2007)

Brief facts, in nutshell, are that the petitioner herein along with respondents No. 1 and 2 contested the election for the post of Sarpanch, Gram Panchayat Pipar Bhavna, Tehsil Bilaigarh, District Raipur, which was held on 15-1-2005. In the election, the petitioner herein obtained

271 votes, whereas respondent No.1 obtained 270 votes, therefore, the petitioner was declared as elected Sarpanch and a certificate was issued in favour of the petitioner. Being dissatisfied with the result, respondent No.1 herein filed an election petition under Section 122 of the C.G. Panchayat Raj Adhiniyam, 1993 and notices of the same were issued of which the petitioner herein filed reply to the election petition.

2) Learned counsel appearing for the petitioner submits that the specified officer passed order dated 4-5-2005 directing re-count of votes without examining the provisions of law applicable to the case. The order was challenged in this Court in Writ Petition No. 2569 of 2005.

3) This court after hearing all the parties passed the following order which reads as under:

> "In view of above legal position, if we look into the impugned order dated 4-5-2005, perusal of order reveals that the Specified Officer passed the following order:
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> "Perused the matter. Considered the facts and following judgment is passed (1) the petition is in accordance with the legal provisions, therefore, preliminary objection is rejected. (2) the case of this Court bearing No.54/B-121/04-05 be tagged with this case which will be treated as part of this case and there is no need of any other evidence and therefore, decision taken for recount."
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> "If we look into the above order, the order is patently illegal and contrary to the Rules as the same has been passed without recording the evidence, without framing the issues and without hearing the parties, therefore, same is liable to be set aside. Accordingly, the petition is allowed, order impugned being

perverse and contrary to the Rules is hereby quashed and learned Specified Officer (Sub Divisional Officer, Bilaigarh) is directed to conduct the proceedings in accordance with the Rules 11 & 12 of the Rules, 1995 and pass the final order after hearing the parties in the matter. Learned Specified Officer to decide the election petition as early as possible preferably within a period of three months."

4) Learned counsel further submits that the Specified Officer without framing the issues passed an interim order on 21-3-2006 in following terms:

"कि मतदान केन्द्र कमांक 46 में मतों की गणना पर्ची नहीं देकर पीठासीन अधिकारी ने गंभीर त्रुटि किया है यदि मतों की संख्या अभ्यर्थियों को बताया जाता तो याचिका पेश करने की नौबत नहीं आती तथा मतों को एजेंटों के समक्ष सील नहीं किया गया– इसलिए मतदान केन्द्र कमांक 46 के सरपंच पद के मतों की पुर्नगणना किया जावे। तहसीलदार बिलाईगढ़ एवं मुख्य कार्यपालन अधिकारी जनपद पंचायत बिलाईगढ़ को लिखा जावे कि ग्राम पंचायत पीपरभावना के मतदान केन्द्र कमांक 46 के सरपंच पद के मतपत्र न्यायालय में पेश किया जावे।"

5) Being aggrieved, the petitioner filed this writ petition inter-alia on the ground that the Specified Officer has relied on sub rule (4) of Rule 77 of M.P. Panchayat Nirvachan Niyam 1995, when there is no such provision in C.G. Panchayat Nirvachan Niyam 1995. The Specified Officer has completely ignored the relevant provisions i.e., Rule 77 of C.G. Panchayat Nirvachan Niyam 1995.

6) Shri Sunil Sahu, learned counsel appearing for the respondent No.1 admits that it is true that sub rule (4) of Rule 77 is not available in

C.G. Panchayat Nirvachan Niyam 1995. The Specified Officer has relied on sub rule (4) of Rule 77 of M.P. Panchayat Nirvachan Niyam 1995, thus, to that extent, the order is bad. The Specified Officer has further relied on the fact that at the time of sealing of ballot boxes, neither the agents nor the candidates were present. Therefore, the order dated 4-5-2005 for recount of votes is proper and valid.

7) Per contra, learned counsel appearing for the petitioner submits that no evidence has been led to the effect as to whether the ballot boxes were sealed in absence of the parties/candidates/agents. No order can be passed without framing the issues of facts and law to order recount of the votes.

8) Learned counsel appearing for the respondent No.5 agrees with the submission made by learned counsel appearing for the petitioner.

9) In view of foregoing, the order dated 4-5-2005 passed by the Specified Officer is bad-in-law and without application of relevant provisions of law. Thus, the order dated 4-5-2005 passed by the Specified Officer, is quashed. However, the Specified Officer is required to frame the issues and examine the facts with regard to the sealing of ballot boxes allegedly in absence of the candidates/agents and proceed to pass the final order, as early as possible, preferably within a period of three months from the date of receipt of a copy of this order.

10) Accordingly, the writ petition is disposed of.

Sd/-
Satish K. Agnihotri
Judge

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